



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 15, 1996

Ms. Cathy Cunningham
Senior Assistant City Attorney
City of Irving
P.O. Box 152288
Irving, Texas 75060

OR96-0339

Dear Ms. Cunningham:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. That request was assigned ID# 30581.

The City of Irving (the "city") received a request for information concerning an incident that occurred during picketing of a performance of the Irving Symphony Orchestra. The request was for the following information:

- (1) Copies of "paperwork" Sutton showed Sgt. Hoenig on November 19 concerning public access to the Irving Arts Center.
- (2) Copy of the incident report filed with you by Sutton in connection with the above described activities.

You contend that the document requested in (1) is excepted from disclosure pursuant to section 552.107 of the Government Code. Section 552.107 excepts from disclosure information that is within the attorney-client privilege and that reveals client confidences or the attorney's legal advice, opinions, and recommendation. Open Records Decision No. 574 (1990). The document at issue contains attorney advice, opinion, and recommendation, and may be withheld from disclosure pursuant to section 552.107.

You contend that the police incident report requested in (2) is excepted from disclosure pursuant to section 552.108. When applying section 552.108, this office distinguishes between cases that are still under active investigation or prosecution and those that are closed. Open Records Decision No. 611 (1992) at 2. In cases that are still under active investigation or prosecution, section 552.108 excepts from disclosure all information except that generally found on the first page of an offense or arrest report. *See Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ.

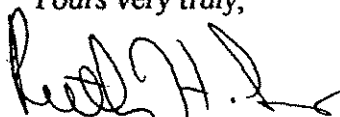
App.--Houston [14th Dist. 1975), *writ ref'd n.r.e. per curiam*, 586 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Section 552.108 is applicable while the case is being investigated and through prosecution. Attorney General Opinion MW-446 (1982) at 2.

A case may be closed due to a conviction or acquittal, or by administrative decision. Open Records Decision No. 372 (1983) at 4. Information in a closed file may be excepted under section 552.108 only if its release would interfere with law enforcement interests. Open Records Decision No. 287 (1981) at 1. Such interference must be apparent on the face of the information or reasonably explained by the governmental body claiming the exception. *Id.*

Therefore, if the case has been closed as described above, the requested information must be released because you have not demonstrated that release would interfere with law enforcement interests. Otherwise, if the case is still being investigated and prosecuted, you may withhold all but the type of information generally described as first page offense type information. We have enclosed a list showing the type of information that must be disclosed in an active case.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref.: ID# 30581

Enclosures: Submitted Documents
Summary of ORD 127

cc: Mr. Raymond M. Hair, Jr.
Dallas-Ft. Worth Professional Musicians Assoc.
Local 72-147
1939 Stadium Oaks Court
Arlington, Texas 76011
(w/o enclosures)